

**Charter Hospital of St. Louis, Inc. d/b/a Charter Hospital of Orlando South and United Nurses of Florida/United Health Care Employees/-FPD/NUHCE/AFSCME-AFL-CIO, Petitioner.** Cases 12-RC-7669 and 12-RC-7670

March 1, 1994

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

On November 26, 1993, the Regional Director for Region 12 issued a Decision and Direction of Elections in which he found appropriate for bargaining a unit of the Employer's registered nurses (RNs) and a separate unit of the Employer's nonprofessional employees excluding business office clericals. In accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review.

I.

The Employer's request for review is granted regarding the appropriateness of the RN unit. On careful consideration of the record, we have decided to affirm the Regional Director's decision (pertinent portions are attached). In affirming, we rely, in addition to the Regional Director's rationale, on the Board's recent decisions in two other psychiatric hospital cases finding separate RN units appropriate. *McLean Hospital Corp.*, 311 NLRB 1100 (1993), and *Holliswood Hospital*, 312 NLRB 1185 (1993).

II.

Concerning the nonprofessional unit, the Regional Director found that seven classifications of employees were business office clericals (BOCs) (receptionists, counseling center office managers, administrative secretary, payroll accounting clerk, admissions clerk, purchasing clerk, and billing and collections clerk) and excluded these classifications from the unit of other nonprofessionals. The Employer contends that BOCs should be included in the nonprofessional unit. Although the Employer does not specifically contest the Regional Director's designation of any of the seven classifications as BOCs, we find that, for the reasons set forth below, the exclusion of the receptionists and counseling center office managers from the all nonprofessional unit is not warranted.

The Employer operates a 60-bed psychiatric hospital providing inpatient care. The Employer also provides outpatient counseling at its two outpatient counseling centers, located several miles from the main facility. There are 48 nonprofessional employees including full-time, part-time, and "PRN" workers who are on-call

employees not guaranteed any set number of hours.<sup>1</sup> In addition to the 7 classifications of employees the Regional Director found to be BOCs, there are 5 PRN licensed practical nurses (LPNs); 24 mental health technicians (MHTs) (6 full time and 18 PRNs); 3 full-time cooks; 2 PRN dietary aids; 2 full-time housekeepers; 1 full-time addictive disease counselor; and 1 full-time activities therapist.

As indicated, of the seven classifications found by the Regional Director to be BOCs, the Employer has one full-time and two PRN receptionists. They work in the lobby at the point where visitors come into the facility. They greet and assist visitors and generally observe egress and ingress. Receptionists answer the telephone and transfer the call to the proper party. Paychecks are left at the reception desk to be picked up by employees. The only requirements for the receptionist position are the ability to read and write and speak clearly. The record discloses that the receptionists would need additional training to move to business office jobs. Receptionists report to the communications manager. The Board has found that receptionists, such as the Employer's, are not BOCs where they perform nonbusiness office functions and are located apart from the main business office. *Rhode Island Hospital*, 313 NLRB 343, 359-360 (1993) (medical records reception clerk is not a BOC). Although the Board has included clericals who also function as switchboard operators in business office clerical units, the record does not show that the Employer's receptionists, in answering telephones, function as switchboard operators. We, therefore, include the receptionists (to the extent otherwise eligible) in the nonprofessional unit.

The two counseling center office managers staff the Employer's two outlying counseling centers in Orlando and Melbourne, several miles from the hospital. The counseling center office managers are supervised by the director of outpatient therapy, who shuttles between the two locations. The office managers' duties were described as secretarial/clerical and reception functions. The Employer rents space in its counseling centers to independent therapists and psychiatric practitioners. The office manager acts as a receptionist and does some paperwork duties relating to admission and billing when a tenant practitioner or someone else wants to refer a patient to the Employer's hospital. The office managers maintain a "business office presence" at the centers. They are not licensed, but are required to have a high school education. In *Rhode Island Hospital*, supra at 358, 359-360, the Board found that billing clerks who do not work in predominantly business office areas and/or who perform billing work not in

<sup>1</sup> The Regional Director agreed with the parties that PRN employees who worked an average of 8 hours or more of work per week during the quarter prior to the election eligibility date are eligible to vote.

connection with the employer's main business office were not BOCs and were includable in the nonprofessional unit which excluded BOCs. The counseling center office managers fit this description and, similarly, will be included in the Employer's nonprofessional unit.

Regarding the remaining five classifications which the Regional Director excluded from the nonprofessional unit, we have, for reasons which follow, determined that issues regarding their exclusion can best be resolved through use of the Board's challenge procedure and direct that these classifications be permitted to vote subject to challenge.

Most of the classifications in the Employer's business office perform typical business office functions, including billing, dealing with insurers, and purchasing. These classifications include the billing and collections clerk, a purchasing clerk, and a payroll and accounting clerk. In addition, the business office staff includes an admissions clerk. All of the classifications in the business office are supervised by the controller. The Regional Director actually found that the business office staff consisted of five persons—the fifth being an administrative secretary. The record indicates, however, that the Employer considers the administrative secretary as part of the administrative staff, apparently different from the business office staff of the four clerks. All five are located in the business office and two nearby offices, but the record does not disclose which office contains which employee. The administrative secretary serves and reports directly to the hospital's administrator. She makes appointments, screens calls and visitors for the administrator, and is generally a personal secretary to him. She does credentialing of physicians and mental health professionals. She spends an undisclosed portion of her time working with the payroll clerk in preparing distribution of the payroll. The administrative secretary may have contact with housekeepers, MHTs, or LPNs if a patient has a strong concern and wants to see the administrator. In view of the lack of detail regarding the administrative secretary's possible BOC duties and her work location in relation to the business office classifications who perform clear BOC functions, and also because we are unclear as to her relationship to the remainder of the business office, we find the administrative secretary should vote subject to challenge.<sup>2</sup>

As indicated, there are four remaining classifications in the business office. The payroll accounting clerk

keeps and prepares the payroll and the accounts payable. The purchasing clerk places orders and buys supplies for the hospital. They work during the daytime office hours. The admissions clerk performs "pre-certifications" with patients' insurance companies. She has contact with most incoming patients to collect the data required to be forwarded to the insurance company. She may check with the needs assessment office for a preliminary diagnosis to relate to the insurance carrier to secure a certification for coverage. The billing and collections clerk has contact with most patients at the time of their discharge. This clerk is responsible for reviewing the patient's bill and arranging to bill and collect any amounts due. All four employees report to the controller and have very limited contact with other nonprofessionals. The payroll, purchasing, and billing clerks perform business office clerical functions: they deal with hospital finances and patient billing. As was the case with BOCs in the Board's Rulemaking (284 NLRB at 1563), these business office clericals are separately supervised and have little interaction with other nonprofessionals because of their physical isolation. The relation of the admissions clerical's functions to that of the business office is less clear. See *William W. Backus Hospital*, 220 NLRB 414 (1975) (admitting clerk located near business office but not supervised by controller was not BOC). We conclude, however, that these four clericals should vote subject to challenge.

In the Rulemaking, the Board found a unit of five or fewer employees to constitute an extraordinary circumstance warranting a case-by-case unit determination (284 NLRB at 1588). Although the Rule does not apply to psychiatric hospitals, the considerations raised by the Board in Rulemaking concerning very small units are applicable to nonacute care facilities: such small units would in many cases be impractically small. See *Park Manor Care Center*, 305 NLRB 872, 877 (1991). Where so few employees are involved despite the shared, unique concerns, and backgrounds that would otherwise make the separate units appropriate, these concerns may be outweighed by considerations of disproportionate, unjustified costs, and undue proliferation of units.

Here, even including the administrative secretary, the Employer has five or fewer employees whom the Board might consider to be BOCs. Were this situation to arise in an acute care hospital setting, the Board would then require further examination of the situation to determine whether such a small number of employees appropriately could be separated from an otherwise all nonprofessional unit. Such an examination would include, inter alia, a comparison of the factors relied on by the Board in the Rulemaking in finding a separate BOC unit appropriate: education, training, functions, location, supervision, wages, interchange, and

<sup>2</sup> Although the Regional Director stated that neither party made any argument at the hearing or in its brief concerning the administrative secretary's possible status as a confidential employee, the Petitioner did assert in its brief that the administrative secretary is a confidential employee. There was, however, no request for review on this issue. In any event, there is insufficient evidence in the record to make a determination that the administrative secretary is a confidential employee who should be excluded from the unit.

transfers among others. There is little here on the record to enable the Board to make such a comparison. Thus, concerning the Employer's billing, admissions, purchasing, and payroll clerks, there is little evidence regarding wages, education, training, interchange, and transfers. In these circumstances, and since there are, at most, 5 or fewer employees out of, at the minimum, 20 nonprofessionals (48 if all PRNs are eligible to vote), we will permit these 4 clerks, too, to vote subject to challenge.

## APPENDIX

### DECISION AND DIRECTION OF ELECTIONS

The Petitioner seeks to represent employees in two separate units.<sup>4</sup> One unit would consist of all full-time and regular part-time registered nurses (RNs). The second unit would include all full-time and regular part-time licensed practical nurses (LPNs) and mental health technicians (MHTs). The Petitioner would also include within each of the above units, those employees variously referred to as per diem, pool, on-call or PRN employees, who worked "at least 8 hours per week or average 128 hours per quarter." The RN unit sought by Petitioner would consist of approximately 32 employees. The unit of LPNs and MHTs would consist of approximately 29 employees, assuming the eligibility of all PRNs. Contrary to the Petitioner, the Employer contended, both at the hearing and in its brief, that the appropriate units at its facility should consist of all professional employees in one unit and all nonprofessional employees in a second unit. The professional unit contemplated by the Employer would consist of some 51 employees; the nonprofessional unit would contain approximately 48.

The Employer's facility is a 60-bed psychiatric hospital which provides inpatient psychiatric care as well as outpatient counseling for children and adults. There are approximately 100 nonsupervisory employees at or associated with the facility. The patients are housed in three patient care units, the general adult unit, the adolescent unit, and the special support unit for the more acute cases. There is a cafeteria, a gymnasium, a community room, a therapy room, and various other offices and areas where a number of inpatient and outpatient services are provided as described here.

The hospital is headed by an administrator; reporting to him are the needs assessment manager, director of human resources, assistant administrator for clinical services, the controller, the director of marketing, and the director of outpatient services.<sup>5</sup> In addition to the foregoing managers and officials, the parties stipulated that the following positions or classifications were to be excluded from either unit as supervisors within the meaning of Section 2(11) of the Act: director of environmental services, director of plant operations, communications manager, supervisor of the partial programs,

director of activities therapy, director of quality and risk management, director of social services, director of medical records, supervisor for the addictive disease program, and the three RN nurse managers who are assigned to each of the patient care units. Consistent with the agreement of the parties, I shall exclude the above-named supervisors and managers from the units found appropriate.

All full-time employees discussed, both professional and nonprofessional, enjoy essentially the same employment benefit package, which includes medical, dental and life insurance, 401(k) retirement plan, and certain holiday and vacation pay. The regular part-time employees are eligible for only the medical and dental insurance. PRN employees do not receive any benefits except that they, like the regular part-time employees, may participate in the 401(k) retirement plan if they work more than 1000 hours during the year.

As noted above, with respect to the professional employees, the Petitioner contends that a unit of RNs is appropriate, while the Employer contends that the only appropriate unit is one of all professional employees, not RNs alone. There are 11 full-time RNs, 1 regular part-time, and 20 PRNs.<sup>6</sup> This number does not include the three nurse managers, one for each unit, who are stipulated to be statutory supervisors, but does include three "nursing house supervisors," who function in the role of charge nurses in the units, mainly during evenings and weekends. Although they direct other nurses with respect to patient care and medical standards, the nursing house supervisors do not possess authority to discipline employees or otherwise possess or exercise indicia of supervisory authority. The Employer would include them in the professional unit and the Petitioner made no contention that they were supervisors or should otherwise be excluded. There being no evidence to the contrary, I shall therefore include the nursing house supervisors in the unit, and exclude the three nurse managers.

Although the Petitioner seeks a unit of RNs only, the Employer argues that any appropriate unit in a relatively small psychiatric facility such as this should include all professional employees. Therefore, the Employer would include with the RNs a total of approximately 19 employees in the following classifications, which it contends are professional employees: needs assessment referral counselors, community service representatives, social workers, utilization review coordinators, and a teacher. At the hearing, the Petitioner did not explicitly contradict or take issue with the Employer's evidence and testimony that the foregoing classifications are professional, nor did it make any such contention in its brief, where it merely argues that these classifications were not involved in direct patient care and therefore did not share sufficient community of interests with the RNs to warrant their inclusion in a broad professional unit. Accordingly, I find in apparent agreement with the parties, that the subject classifications do qualify as professional employees.<sup>7</sup>

I turn now to the question of whether or not RNs constitute a separate appropriate unit. The record reflects that

<sup>4</sup>In its petition in Case 12-RC-7669, the Petitioner originally sought a unit of full-time and regular part-time RNs and medical health technicians. In Case 12-RC-7670, the Petitioner sought a unit of "pool registered nurses, LPNs, and mental health technicians." In its brief, the Petitioner abandoned the unit contentions set forth in its petitions, and instead sought other units set forth above.

<sup>5</sup>The director of outpatient services is also called the director of outpatient therapy.

<sup>6</sup>PRN employees are on-call employees who are not guaranteed any set number of hours and whose utilization is dependent on the census level of the hospital.

<sup>7</sup>See *Park Manor Care Center*, 305 NLRB 872 (1991); 306 NLRB 598 (1992); *St. Barnabas Hospital*, 283 NLRB 472 (1987); *Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981); *Sutter Community Hospitals*, 227 NLRB 181 (1975).

RNs are immediately supervised by the nurse managers, who in turn report to the assistant administrator for clinical services, an RN herself. The RNs in the respective units medically direct and are ultimately responsible for the work of the LPNs and MHTs in the units. One or more RNs are present in each unit at all times. To accomplish this, RNs work three 8-hour shifts. The RNs also have occasion to meet with other hospital professionals and submit a "nursing assessment" of patients and their treatments as described further below. The nurses supervise the administering of all medications.

There are five full-time and four PRN needs assessment referral counselors, who interview, assess, and evaluate newly arriving patients. They make a profile assessment which is used in subsequent team meetings to plan a course of treatment for the patient. They also talk to and deal with the families of arriving patients as a part of their assessment duties. Requirements for the position include a bachelors degree with at least a current enrollment in a masters degree program with an emphasis on mental health counseling. There is by law a continuing education requirement for the counselors. They work at the facility in shifts between 8 a.m. and 10 p.m., and report to the needs assessment manager.

There are two community service representatives, both full time. Their function is essentially a sales or marketing one, and they are supervised by the director of marketing, who himself reports directly to the administrator. The community service representatives market the services of the Employer to institutions, schools, physicians, psychiatrists, judicial and penal systems, and businesses, and procure contracts from these entities. A bachelors degree is a prerequisite for the position, and of the two incumbents, one has an MBA degree and one is an RN with psychiatric training. They are salaried and one has a second outside office in Melbourne, Florida.

There are two social workers, who are supervised by the manager of social services and ultimately, the assistant administrator for clinical services. Both have masters degrees in social work, which is a general requirement for the position. The social workers compile a "psycho-social assessment" of the patient and his history and background within several days of admission. This assessment is used by the clinical team in planning therapy and treatment. Their offices are in the patient units.

There are two utilization review (UR) coordinators, one of whom is a PRN. They report to the director of medical records, who in turn reports to the controller. Although both UR coordinators are RNs, this is not a requirement for the position, which could be filled by some other degreed "psychiatric professional." The UR coordinators deal with the Government, insurance companies, and other third party payers regarding the appropriateness of treatment, length of stay, anticipated discharge dates, and other matters related to costs.

The Employer employs one teacher, who holds a bachelors degree and has additional psychiatric training. This individual is an educator responsible for teaching the patients aged 17 and under. Her duties also include writing assessments concerning the progress and problems of her students in the adolescent unit.

The Employer contends that the above-mentioned professional classifications should be included with RNs in any appropriate unit because of the degree of interaction and work contact entailed by the Employer's "Multi-disciplinary Treat-

ment Plan in which the full range of . . . staff interact in developing and implementing a plan of treatment and therapy for each patient." In connection with this multidisciplinary mode of treatment, meetings are held, soon after admission and some thereafter, in which the social workers and perhaps the needs assessment counselors and teacher, along with some nonprofessional employees discussed, may collaborate with the RNs, their supervision, and others to discuss patients' cases from the perspectives of their particular disciplines.

Based on the record as a whole, and the rationale set forth below, and applying the "empirical community of interests" test set forth in *Park Manor Care Center*, 305 NLRB 872 (1991), I find that a separate unit of RNs is appropriate. In so finding, I note that the RNs constitute a sizable homogeneous grouping of professionals involved in continuous, direct patient care, with a chain of command through the nurse managers and to the assistant administrator for clinical services, herself an RN. While it is true that some other professionals at the Employer's hospital also have a substantial degree of patient contact, it is also clear that staff RNs are hired to perform functions distinct from those performed by the other professionals.

The Board found during Rulemaking,<sup>8</sup> that registered nurses in acute care hospitals constitute a discrete group whose distinctive interests warrant separate representation. Factors relied on by the Board included unique work schedules; unique responsibilities; common supervision by other nurses; separate labor market and distinct wages from those of other professionals; separate education, training, and licensing requirements; interaction with other RNs and lack of regular and recurring contact with other professionals; lack of interchange; and history of representation and collective bargaining in separate units. 53 Fed.Reg. 33900, 33911-33914; 284 NLRB 1528, 1543-1548 (1988). Most of these factors are found in the present case as well.

In its Rulemaking, the Board also talked about the team concept of patient care. 53 Fed.Reg. at 33913; 284 NLRB at 1546. Thus, the Board noted that the participation of RNs in teams might be somewhat limited. In Rulemaking, the Board further noted:

More importantly, the fact that the RNs may interact and work with other professionals on teams does not alter the separateness of their identify . . . . The evidence was uncontracted that it does not alter each licensed professional's responsibility for his or her individual scope of practice.

53 Fed.Reg. at 33913; 284 NLRB 1546.

At the Employer's facility, although the teacher reports directly to the assistant administrator for clinical services, and the two social workers also report to her indirectly, other non-RN professional classifications—UR coordinators, community service representatives, and needs assessment referral counselors—are not in the "clinical" chain of command.

<sup>8</sup>When issuing its Final Rule, applicable to acute care hospitals only, the Board specifically excluded psychiatric hospitals. 54 Fed.Reg. 16336, 16348; 284 NLRB 1580, 1597 (1989). However, under the *Park Manor* test, the Board's findings during Rulemaking are also to be taken into account when deciding the appropriate unit in a health care facility not covered by the Final Rule.

Moreover, while there is some evidence of work contacts between the other professional classifications and the RNs working in the patient care units, there are important differences which support the Petitioner's argument that the RNs constitute a sufficiently separate, distinct grouping to warrant separate representation. Thus, the record does not reflect that any of the above classifications work around-the-clock shifts as do the RNs. As a group, they are not directly and immediately involved in direct patient care to the extent that the RNs are, nor are they as a group closely involved with the oversight and medical supervision of the LPNs and MHTs on the unit floors. The foregoing classifications' contacts with patients, and with the RNs, is for the most part limited to the time of admission and to sporadic or special circumstances thereafter. Accordingly, I shall direct an election in a separate unit of RNs.

Turning now to the nonprofessionals, the Petitioner, as stated, seeks a unit of full-time and regular part-time LPNs and MHTs, including PRN employees in these classifications who satisfy a proposed formula for average hours worked. The Employer, on the other hand, urges that only a unit of all nonprofessional employees is appropriate. The Employer would include, in addition to the LPNs and MHTs, the following nonprofessional classifications: dietary aides, cooks, housekeepers, the addictive disease counselor, the activities therapist assistant, the business office staff, the receptionists, and counseling center office managers.

The five LPNs are all on-call employees (PRNs). By Florida law, an LPN must have completed 1 year of training at a technical or vocational school and pass an exam to be licensed. Thereafter, there are biennial continuing education requirements. An LPN can administer medication and provide various other forms of direct patient care. All of the Employer's LPNs work under the statutory supervision of the unit nurse managers, the medical supervision of the RNs, and work with the MHTs, whose status is discussed below. The Employer takes the position that LPNs are technical employees, while the Petitioner has taken no position on this issue. In agreement with the Employer, and based on the LPNs' training, licensing, and job duties, which require the use of independent judgment, I conclude that they are technical employees. *Barnert Memorial Hospital Assn.*, 217 NLRB 775, 780 (1975).

Both parties would also include the approximately 24 MHTs in a unit with LPNs. There are 6 full-time and 18 "PRN" MHTs. The MHTs, as stated above, work in the patient care units under the same supervision as LPNs. The MHTs are unlicensed, and no formal training is required to be employed. The Employer does require a high school diploma, and considers some college courses, in an area such as psychology, or some prior experience with psychiatric patients as desirable but not required. The MHT by law can never administer medication, but the more experienced ones may take EKGs and patient vital signs, enter some data on charts, or do "Q-15s" (15-minute checks on suicidal patients), all under the oversight of an LPN or RN. These skills are acquired mainly through on-the-job training. Most of the time, their duties include escorting patients to and from meals or meetings and otherwise attending to their personal,

rather than medical, care. Although there is a single reference in the Employer's brief to the MHTs as "technical employees," neither party espoused this position at the hearing or actually argued such in its brief. In any case, it is quite clear that the MHTs do not meet the Board's long held criteria for technical employees. The levels of education and training as well as the duties required of the MHTs are not sufficient to make them technicals.<sup>9</sup>

Having concluded that MHTs are not technical employees, it follows that the unit sought by the Petitioner is not a technical unit. Furthermore, inasmuch as the only employees shown or found to be technical are the five LPNs, all of whom are on-call PRNs, it does not appear that a separate technical unit is appropriate here. The Board in its acute care Rulemaking, has expressed concern about units of five or less. Here, there is a real possibility that a technical unit of LPNs would be less than five employees, should one or more of the LPNs not meet the PRN formula for eligibility set forth here. Therefore, taking into account the small number of technical employees at the Employer's facility, the desires of the parties, and all of the evidence concerning the Employer's operations, and applying the *Park Manor* test, I conclude that a grouping of employees broader than that sought by the Petitioner is appropriate.

The Employer would include the three cooks (full time), the two dietary aides (PRN), and the two housekeepers (full time) in a nonprofessional unit. The cooks and dietary aides prepare and serve foods to patients and staff in the hospital cafeteria, and perform the obvious chores of cleaning up and washing associated with food services. The two housekeepers perform custodial duties throughout the facility. All three positions are supervised by the director of environmental services, who in turn reports to the human resources director.

There is one addictive disease counselor (full time), who is described as a "lay role model" for patients, and who provides encouragement and information about AA, NA, and the recovery process. He is not licensed, has no particular academic training, and the job requirements are described as "about the same as a MHT." He reports to the chemical dependency supervisors.

There is one activities therapist assistant (PRN), who is not licensed or formally trained. No degree is required for this position. This individual helps with and encourages activities and game-playing in the gym and elsewhere.

Based on the record and the foregoing, I shall also include the cooks, dietary aides, housekeepers, addictive disease counselor, and the activities therapist assistant in the nonprofessional unit. Although several of these categories are not involved in full-time patient care, it is appropriate to include them in an overall nonprofessional unit for the reasons stated.

<sup>9</sup>The instant employees are distinguishable from the mental health workers found by the Regional Director to be technical employees in *Brattleboro Retreat*, 310 NLRB 615 (1993). In the instant case, there is no record evidence that a substantial portion of the MHTs are college graduates; indeed, the inference is that few if any are degreed. See also fn. 1 in the *Brattleboro* case.